



## **DETERMINATION OF MERGER NOTIFICATION M/12/010 - Pallas/Crossgar**

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### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Pallas Foods Ltd. of Crossgar Foodservice Ltd.**

**Dated 23 August 2012**

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### **Introduction**

1. On 22 June 2012, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Sysco Corporation ("Sysco"), through its wholly owned subsidiary Pallas Foods Ltd. ("Pallas"), would acquire sole control of Crossgar Foodservice Limited ("Crossgar").
2. The proposed transaction is pursuant to a share purchase agreement whereby Pallas would purchase the entire issued capital of Crossgar from the vendors, i.e., the current Crossgar shareholders.<sup>1</sup> Sysco states that:  
  

*"Both Crossgar Foodservice and Pallas Foods will retain their existing brand identities and management teams at the two companies will remain in place."<sup>2</sup>*
3. On 19 July 2012 the Authority served an RFI on each of Pallas and Crossgar. Issuing the RFIs automatically suspended the procedure for the Authority's Phase 1 assessment.
4. Upon receipt of the responses to the RFIs, the "appropriate date" (as defined in section 19(6) of the Act) became 26 July 2012 and the new Phase 1 deadline became one month from that date.
5. The Authority also requested and received, on an on-going basis, further information and clarifications from the notifying parties.
6. During the investigation, the Authority sought the views of a number of third parties, comprising competitors, customers and Bord Bia,<sup>3</sup> none of whom raised competition concerns about the proposed transaction.

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<sup>1</sup> Crossgar Shareholders, as listed in Schedule 1 of the Share Purchase Agreement, are (with % holding of 400,540 ordinary shares): [...]. [...] also holds 5,000 ordinary B shares.

<sup>2</sup> See <<http://www.sysco.com/investor/pressreleases.html>>.

<sup>3</sup> Bord Bia is a public body established by statute which operates in accordance with the provisions of the Bord Bia Acts 1994 and 2004 under the aegis of the Minister for Agriculture, Food and the Marine. Bord Bia's mission is "to grow the success of a world class Irish food and horticulture industry by providing strategic market development, promotion and information services." For more information on Bord Bia, see <<http://www.bordbia.ie>>.

## The Undertakings Involved

### *Acquirers*

#### *Sysco*

7. Sysco is headquartered in Houston, Texas, USA and is involved, primarily in the USA and Canada, in selling, marketing and distributing food products and non-food products (including paper products and cleaning and janitorial products) to customers such as restaurants, healthcare and educational facilities, and lodging establishments. Sysco's products also include equipment and supplies for the foodservice and hospitality industries.
8. For the year ended 30 June 2011 Sysco's worldwide turnover was approximately €28.809 billion<sup>4</sup> of which approximately €[...] million was generated on the island of Ireland, all by Pallas.

#### *Pallas*

9. Pallas, a wholly owned subsidiary of Sysco (acquired by Sysco in 2009)<sup>5</sup>, is headquartered in Newcastle West, County Limerick. Pallas is involved, on the island of Ireland, in the selling, marketing and distributing of food and non-food products to foodservice customers such as restaurants, pubs, hotel groups and catering establishments. Pallas also has customers in the public sector.
10. As shown in Annex 1 Pallas distributes food and non-food products via a central warehouse in Newcastle West and seven regional depots. These serve as distribution and delivery centres across the island of Ireland. Pallas distributes Pallas-branded products<sup>6</sup> and branded products of other producers or suppliers.<sup>7</sup>
11. Currently, the vast majority of Pallas's turnover is generated from its activities in the State with the remainder generated in Northern Ireland. For the year ended 30 June 2011 Pallas's worldwide turnover was approximately €[...] million of which approximately €[...] million was generated within the State and approximately €[...] million was generated in Northern Ireland.<sup>8</sup>

### *Target*

#### *Crossgar*

12. Crossgar is headquartered in Seaforde, County Down, Northern Ireland. Crossgar is involved, on the island of Ireland, in the selling, marketing and distribution of food and non-food products to foodservice customers. Crossgar customers include restaurants, pubs,

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<sup>4</sup> Calculated using the ECB average annual exchange rate for July 2010 – June 2011 of €1 = \$US 1.364.

<sup>5</sup> See <<http://www.sysco.com/investor/pressreleases.html>>. This transaction was not notified in Ireland.

<sup>6</sup> For more information about Pallas and Pallas brands see <<http://www.pallasfoods.eu/>>.

<sup>7</sup> Correspondence with the parties dated 5 July 2012 refers to both non-Pallas and non-Crossgar brands, and also states that [...]

<sup>8</sup> As stated by parties [...] % of Pallas's turnover is generated in the State and [...] % in Northern Ireland. Notification Form page 2.

hotel groups and catering establishments. Crossgar also has customers in the public sector in both the State and in Northern Ireland.

13. As shown in Annex 1 Crossgar distributes food and non-food products via a central warehouse in Seaforde and three regional depots. Crossgar distributes Crossgar-branded and branded products of other producers or suppliers. Crossgar also owns and controls some of the sourcing of its poultry, meat and sauce products. Crossgar states:

*"We are unique in the foodservice market as we own and control the sourcing of our poultry, meat and sauce products."<sup>9</sup>*

14. Currently, a significant majority of Crossgar turnover is generated from its activities in Northern Ireland. For the year ended 31 March 2012 Crossgar's worldwide turnover was approximately €44 million of which approximately €[...] million was generated in the State.<sup>10</sup>

### **Third Party Submissions**

15. No submissions were received.

### **Rationale for Proposed Transaction**

16. The parties state the following in relation to the proposed transaction. Sysco states that:

*"Crossgar Foodservice is a strong company with excellent customer relationships. This investment, along with the acquisition of Pallas Foods in 2009 represents our commitment to the Ireland market and provides us additional strategic opportunities."<sup>11</sup>*

17. Pallas states that it:

*"... believes that the Proposed Transaction would bring synergies to make Pallas a more efficient supplier of food products in Ireland, by extending the available product range as well as increasing deliveries and improving delivery times to customers."<sup>12</sup>*

18. Crossgar states:

*"The acquisition will expand Sysco's presence on the island of Ireland. Sysco acquired Pallas Foods in 2009. Both Crossgar Foodservice and Pallas Foods will retain their*

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<sup>9</sup> For more information on Crossgar, including foodservice, meat, poultry and sauces, see <<http://www.crossgar.ie/about.php>>. [...].

<sup>10</sup> Calculated using the ECB average annual €/£ exchange rate for April 2011- March 2012 of 0.8631. All Crossgar turnover generated outside of the state, approximately €[...] million, is generated within Northern Ireland.

<sup>11</sup> *op. cit.* note 2.

<sup>12</sup> Notification Form page 6.

*existing brand identities, and management teams at the two companies will remain in place.” and*

*“The transaction provides the business with a number of benefits, namely enhanced distribution and wider product choice for our customers.”<sup>13</sup>*

## **Description of the Foodservice Sector in Ireland**

19. The most up-to-date information on the foodservice sector on the Ireland of Ireland was published by Bord Bia – the Irish Food Board.<sup>14</sup> Bord Bia, in its *Irish Foodservice Channel Insights 2011*, report states that:

*“There are a variety of definitions of what is foodservice and what is covered by it. In this study [Irish Foodservice Channel Insights 2011] it is all food and beverages consumed away from home.”<sup>15</sup>*

20. Further to the above definition, the term “operator” describes businesses or institutions that serve food and beverages. As listed in Table 1 the term foodservice operator is applicable to a variety of dining situations from fast-food outlets, full service restaurants and staff canteens to hospitals and prisons.
21. The foodservice sector is similar to the food retail sector in that products used by and/or sold by foodservice operators (e.g., dairy, eggs, meat produce and paper products etc.) are also sold by retailers such as supermarkets and convenience stores. The most obvious difference between the two sectors is the location where food is consumed (“eating in” versus “eating out”). There are also other differences, e.g., the stock keeping units (“SKUs”) offered to foodservice operators are larger than those typically available in retail stores such as supermarkets or convenience stores.
22. Foodservice covers a diverse range of business relationships and dining experiences. The diversity of the sector is illustrated in Tables 1 and 2 below which subdivide the sector into operator and product categories.

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<sup>13</sup> *op. cit.* Note 2. see also <[http://www.crossgar.ie/news\\_details.php](http://www.crossgar.ie/news_details.php)>.

<sup>14</sup> Bord Bia is a public body established under the Bord Bia Act 1994 and operates in accordance with the provisions of the Bord Bia Acts 1994 & 2004 and under the aegis of the Minister for Agriculture, Fisheries and Food. Bord Bia's mission is "to grow the success of a world class Irish food and horticulture industry by providing strategic market development, promotion and information services. For more information on Bord Bia see for example the most recent, 2010 Annual Report at: <<http://www.bordbia.ie/aboutus/reports/Current%20Annual%20Reports/Annual%20Report%202010.pdf>>.

<sup>15</sup> Bord Bia *Irish Foodservice Channel Insights November 2011* page 22. See <<http://www.bordbia.ie/industry/services/information/publications/bbreports/FoodserviceReports/2011%20Irish%20Foodservice%20Channel%20Insights%20report.pdf>>.

**Table 1: Operator Categories**

	<b>Operator Category</b>	<b>Description</b>
1	Quick Service	Fast Food.
2	Full Service	Orders are taken at the table.
3	Pubs/Coffee Shops	Pubs, bars, cafés and coffee shops.
4	Hotels/ Accommodation	Catering in hotels and guesthouses.
5	Other Commercial	<ul style="list-style-type: none"> <li>• Leisure: catering at venues for sport, entertainment or other events.</li> <li>• Travel: catering at stations, airports, in-flight or on trains.</li> <li>• Retail: store restaurants, particularly department stores.</li> </ul>
6	Business and Industry	Catering to the workforce in offices and factories.
7	Health	Catering in hospitals and the care sector.
8	Education	Catering to pupils in schools, colleges and universities.
9	Other Public Sector	Catering for prisons and armed services.

Source: Competition Authority based on Bord Bia *FoodService Channel Insights 2011*<sup>16</sup>

<sup>16</sup> *ibid.* page 22.

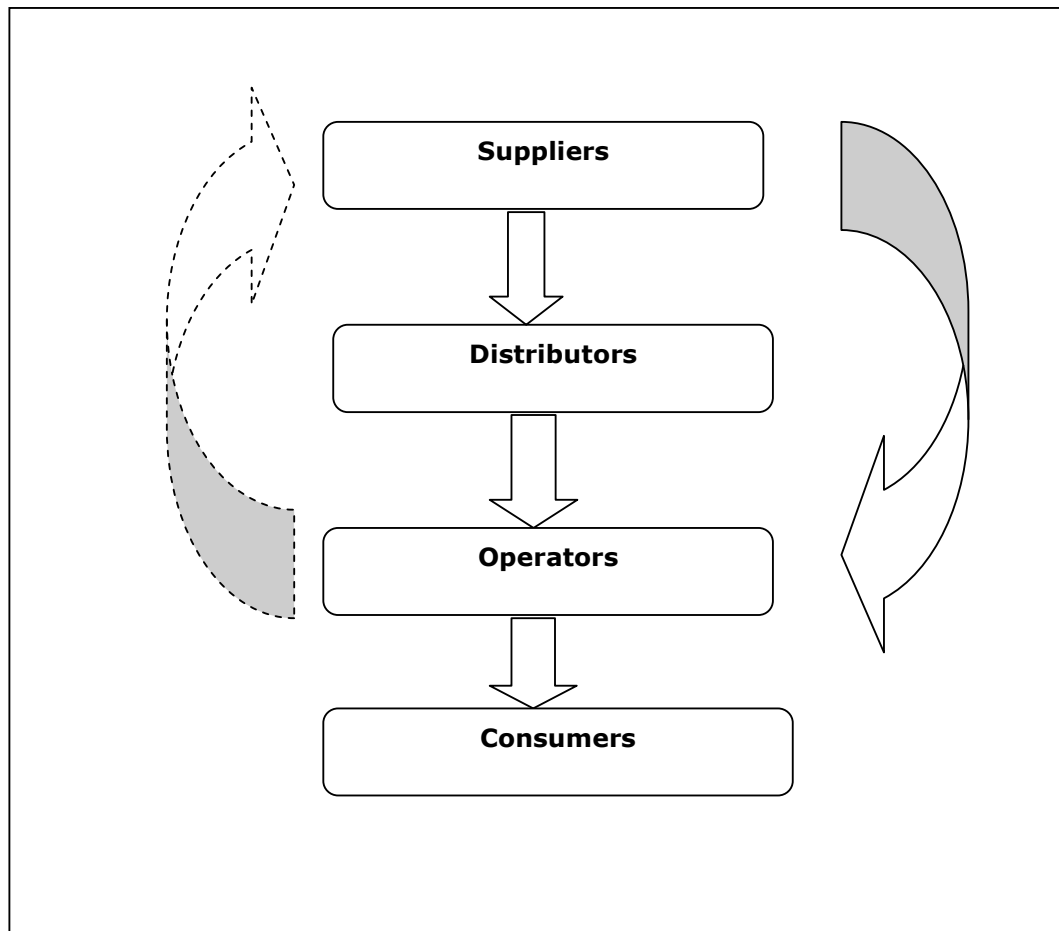
**Table 2: Product Categories**

	<b>Product Category</b>	<b>Description</b>
1	BEVERAGE	Wine, Coffee (Beans-Ground), Tea, Beer and others.
2	CANNED & DRIED	Sauce, Condiments, Marinades, Veg Tinned, Pastry & Baskets, Soft Drinks, Juices, Smoothies, Cereals & Rice, Oils, Herbs, Sugars and others.
3	CHEMICAL & JANITORIAL	Chemicals and others.
4	DAIRY	Cheese, Liquid Milk, Butter, Egg Products, Yoghurt, Ice Cream and others.
5	FROZEN	Bread, Cakes, Veg, Biscuits, Ready Meals, Fruits and others.
6	MEAT	Beef, Lamb, Pork, Bacon, Sausages, Puddings and others.
7	MEDICAL	Cosmetics Sanitary & Baby and others.
8	PAPER & DISPOSABLES	Paper & Disposables and others.
9	POULTRY	Chicken Raw, Cooked, Game, Turkeys and others.
10	PRODUCE	Fresh Veg, Fresh Fruit, Salads & Sandwich Fillings and others.
11	SEAFOOD	Fresh & Frozen Fish and others.
12	SUPPLIES	Fuel for Cookers/Warmers, Equipment and others.

Source: Information supplied by the parties

23. Figure 1 below describes the various routes to market in the foodservice sector.

**Figure 1: Foodservice Sector Structure and Relationships**



Source: Competition Authority based on information from the parties and third parties

24. As set out in Figure 1 the structure of the foodservice sector comprises (i) suppliers of foodservice products (i.e., food and non-food products), (ii) foodservice distributors, (iii) foodservice operators and (iv) the end consumer. Foodservice Suppliers produce and/or sell food products to distributors (such as Pallas or Crossgar). Foodservice distributors sell these products to foodservice operators.
25. In the “Delivered Wholesale” route to market scenario depicted by the centre downward arrows, foodservice distributors are intermediaries between suppliers and the foodservice operators, i.e., the supplier sells to the distributor who in turn sells to the operator. Delivered Wholesale accounts for a significant majority of foodservice products purchased by foodservice operators.<sup>17</sup>
26. As confirmed by market enquiries other routes to market also exist in addition to the traditional Delivered Wholesale model. For example:

<sup>17</sup> *ibid.* page 33. Bord Bia estimates that Delivered Wholesale is the route to market for approximately 62% of all foodservice products, measured by value in terms of operator buying prices.

- Operators may purchase products from wholesalers on a “Cash and Carry” basis, i.e., the distributor sells products to the operator but the distributor has no delivery function as the operator collects and transports the products.<sup>18</sup>
  - Suppliers, particularly large multinational suppliers, may bypass distributors altogether and negotiate with operators for the direct supply of products (right arrow).<sup>19</sup>
  - Operators may nominate suppliers, i.e., negotiate directly with suppliers and have the products stored and/or delivered by a distributor (left arrow) in which case the distributor’s role is purely logistics, or “Wheels Only,” with no buying or selling.<sup>20</sup>
27. Within the island of Ireland there are a number of so-called “full range” distributors (e.g., Pallas, Crossgar, Musgrave, BWG, Lynas, and Brakes) that distribute a wide range of products over all or most of the island of Ireland. However, it is also the case that full range distributors will be stronger in certain types of products relative to other full range distributors.
28. There are also within the island of Ireland many distributors who specialise either in terms of location and/or product range. For example, Bord Bia’s *Irish FoodService Market Directory*<sup>21</sup> identifies over 30 distributors within the island of Ireland ranging from full range distributors to distributors specialising in selling a limited range of products and/or servicing a limited geographical area.<sup>22</sup>
29. Market enquiries indicate that within the foodservice sector there are contractual and non-contractual *ad hoc* trading relationships. For example, large public sector operators (such as hospitals and prisons) procure the vast majority of foodservice product through competitive tendering processes. Market enquiries also indicate that large operators will often prefer to purchase from a smaller rather than a larger number of distributors, as this reduces administration costs.<sup>23</sup> By contrast, the distribution of foodservice products to smaller independent operators is mainly on a non-contractual basis. Market enquiries also indicate that, particularly for smaller operators, the purchase of foodservice products often involves many distributors and also purchasing of products on a cash and carry basis.

<sup>18</sup> *ibid.* page 33. Bord Bia estimates that Cash and Carry is the route to market for approximately 17% of all foodservice products.

<sup>19</sup> *ibid.* page 33. Bord Bia estimates that Direct Supply is the route to market for approximately 10% of all foodservice products. The Parties identify Unilever, Heinz and Kellogs as examples of suppliers who negotiated directly with operators.

<sup>20</sup> *ibid.* page 33. Bord Bia estimates that Wheels Only is the route to market for approximately 8% of all foodservice products. Bord Bia estimates that Operators purchasing from food retailers accounts for 3% of all foodservice products.

<sup>21</sup> *Irish FoodService Market Directory* See <<http://www.bordbia.ie/industryservices/information/publications/bbreports/FoodserviceReports/2011%20Irish%20Foodservice%20Market%20Directory.pdf>>.

<sup>22</sup> There is no obligation on distributors to be listed by Bord Bia. According to Bord Bia approximately 70-80% of distributors are listed. One notable absentee is Bunzl, see <[http://www.bunzl.com/bunzl/business/our\\_geographies/uk\\_ireland](http://www.bunzl.com/bunzl/business/our_geographies/uk_ireland)>

<sup>23</sup> Operators, large and small, must manage the costs arising from the price they pay to distributors and/or suppliers directly and also the administration costs of purchasing. Market enquiries did not indicate any instance of one distributor supply 100% of products to one customer.



## Analysis

30. There is a horizontal overlap in the activities of the parties within the State and within the island of Ireland. Both Pallas and Crossgar are foodservice distributors. By contrast there is no horizontal overlap in the production of meat and poultry products because Pallas is not active in meat and poultry production. Consequently the Authority's analysis concentrates primarily on the competitive effects arising from the combining of two foodservice businesses.

## Views of the Parties

31. The parties submit that an appropriate product market definition for assessing the proposed transaction could encompass all wholesale food and grocery distribution.<sup>24</sup> The parties' submissions to the Authority focus primarily on foodservice distribution, which the parties describe as:

*"a business to business market and consists of foodservice distributors selling to foodservice operators. This is the provision of food and non-food products to those engaged in providing meals to away-from-home consumers".<sup>25</sup>*

32. The parties also submit that:

*"it is appropriate to assess the parameters of competition more widely than on a national basis as Irish retailers are able to (and do) source food from suppliers based abroad."* and

*"The geographic market should encompass at least the UK and Ireland."<sup>26</sup>*

33. The parties further submit, however, that the question of geographic market can be left open.<sup>27</sup> The parties' submissions to the Authority are primarily in terms of an island of Ireland market.

34. The parties further state that:

*"In light of the fragmented nature of the market and the significant number of competitors in the market ... the Proposed Transaction would lead to a de minimis overlap in Ireland".<sup>28</sup>*

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<sup>24</sup> The parties cite M/08/014 – BWG/Mangans to support a definition that covers three wholesale sectors: (i) foodservice, (ii) retail and (iii) licensed trade. See <http://www.tca.ie/images/uploaded/documents/M08014%20BWG%20Mangans%20Determination%20Public.pdf>.

<sup>25</sup> Notification Form page 16. The parties also cite UK and EU case law to illustrate where market definitions in terms of operator or product categories have previously not been necessary. See: (i) Brakes Bros/Woodward Foodservice Limited at [http://www.ofst.gov.uk/shared\\_ofst/mergers\\_ea02/2008/Brakes.pdf](http://www.ofst.gov.uk/shared_ofst/mergers_ea02/2008/Brakes.pdf) (ii) Case COMP/M.1802. Unilever/Amora-Maille at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:240:0005:0005:EN:PDF> and [http://ec.europa.eu/competition/mergers/cases/decisions/m1802\\_fr.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m1802_fr.pdf). (iii) Case No COMP/M.1990 Unilever/Bestfoods at [http://ec.europa.eu/competition/mergers/cases/decisions/m1990\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m1990_en.pdf).

<sup>26</sup> Notification Form pages 16 and 17.

<sup>27</sup> *ibid.* page 17.

<sup>28</sup> Notification Form page 3.

35. Table 3 sets out the parties' market share estimates for the entire foodservice distribution sector on an island of Ireland basis.

**Table 3: Distributor Market Shares (Island of Ireland) based on sales to Foodservice Operators**

<b>Distributors</b>	<b>2010 %</b>	<b>2011 %</b>
<b>Pallas</b>	[5-15]%	[5-15]%
<b>Crossgar</b>	[0-10]%	[0-10]%
<b>Combined Pallas + Crossgar</b>	[5-25]%	[5-25]%
<b>Musgrave</b>	[5-15]%	[5-15]%
<b>BWG</b>	[0-10]%	[0-10]%
<b>Brakes</b>	[0-10]%	[0-10]%
<b>Lynas</b>	[0-10]%	[0-10]%
<b>Cuisine (Aryzta)</b>	[0-10]%	[0-10]%
<b>Henderson</b>	[0-10]%	[0-10]%
<b>Allied</b>	[0-10]%	[0-10]%
<b>La Rousse</b>	[0-10]%	[0-10]%
<b>Other</b>	[50-60]%	[50-60]%

Source: Information supplied by the parties.<sup>29</sup>

<sup>29</sup> *Op cit.* note 15, pages 13, 33 and 34. Bord Bia estimates total foodservice, by value, of €1.85 billion and €1.98 billion for 2010 and 2011 respectively.

36. The parties further state that:

*"there is a significant amount of switching in the market, with many foodservice operators sourcing from a number of foodservice distributors, including specialist and local suppliers."*<sup>30</sup>

37. Pallas identifies Musgrave, Brakes, BWG, Lynas and Allied Foods, as its main competitors but not Crossgar. Crossgar identifies Lynas, O'Mahony Meats, Musgrave, BWG and Pallas as its main competitors.<sup>31</sup> In addition the parties highlight the different geographical locations of Pallas and Crossgar headquarters and depots as shown in Annex 1, and the geographical distribution of revenue.<sup>32</sup>

## **Views of the Authority**

### *Market Definition*

38. Tables 1 and 2 list operator and product categories within the foodservice sector. The extent of the overlap between the activities of Pallas and Crossgar can be illustrated with reference to Tables 1 and 2. Both Pallas and Crossgar are active in distributing foodservice products to operators in each of the categories in Table 1 above. Pallas distributes products in all the product categories in Table 2 and Crossgar distributes in all categories except for Medical products and Seafood products.

39. It is possible to define product markets within the foodservice sector in terms of the operator and product categories listed in Tables 1 and 2 respectively. It is also possible to divide foodservice distribution into segments corresponding to the various modes by which operators purchase foodservice products, as described in paragraphs 25 and 26 (i.e., Delivered Wholesale, Cash and Carry, Wheels Only and Direct Supply).

40. For the purpose of examining the competitive effects of the proposed transaction, however, the Authority does not need to come to a definitive view on the precise relevant product market because its conclusions concerning the competitive effects of the proposed transaction would be unaffected whether the relevant product market is defined narrowly (e.g., in terms of product category, customer category or mode of distribution) or more broadly.

41. As illustrated in paragraphs 9-14 above and in Annex 1, both Pallas and Crossgar distribute foodservice products on an island of Ireland basis. This suggests that the geographical market is broader than the State. For the purpose of examining the competitive effects of the proposed transaction the Authority does not need to come to a definitive view on the precise relevant geographic market because its conclusions concerning the competitive effects of the proposed transaction, would be unaffected whether the relevant product market is defined broadly or more narrowly, for example as the State. However, for the purposes of reviewing the notified transaction, the

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<sup>30</sup> Notification Form. Pages 3-4.

<sup>31</sup> Notification Form page 15. In correspondence of 12 July 2012 the parties state that [...].

<sup>32</sup> As described in paragraphs 11 and 14 the majority of Pallas turnover is generated within the State and the majority of Crossgar turnover is generated in Northern Ireland.

Authority considers the narrowest relevant geographic market to be the island of Ireland.

### Market Shares

42. The parties use Bord Bia 2010 and 2011 estimates of the total foodservice sector measured in terms of operator buying prices (i.e. wholesale prices) of €1.85 billion and €1.98 billion respectively.<sup>33</sup> As stated by Bord Bia:

*“Quantification of foodservice is notoriously difficult due to its fragmentation and lack of universal agreement on definitions and parameters of channels within the industry. However, we [Bord Bia] believe the multi source methodology used in this study allows data to be cross checked and differences accounted for, and as a result maximises data accuracy”.*<sup>34</sup>

43. The parties’ estimates of the market shares are based on their own estimates of competitors’ turnover rather than a more independent and robust basis as would be the case for example in the food retail sector where independent data can be obtained, e.g., from Kantar, AC Nielsen and International Data Group.<sup>35</sup>
44. Herfindahl-Hirschmann Index (“HHI”) calculations based on the parties’ estimates suggest that the proposed transaction is a so-called “Zone A merger” i.e., a merger in a fragmented market, and that competition concerns are less likely than for transactions in more concentrated so-called “Zone B” or “Zone C” mergers.<sup>36</sup>
45. Also the market shares are on an island of Ireland basis and hence only approximate the turnover and shares within the State. The market share within the State for Pallas and also for some other competitors (e.g., Musgrave and BWG) would be expected to rise if the market were limited to the State. However, Crossgar’s market share would be less for a market limited to the State.
46. The market share estimates in Table 3 must be treated with some caution since there is no independent source of information upon which to base such calculations.<sup>37</sup> The Authority’s own analysis, based in part on its own enquiries, suggests that the parties may have overestimated their own market shares and also the shares of one or more of their competitors, while underestimating that of one of more competitors. But market enquiries indicate that the foodservice sector is fragmented with many competitors to Pallas and Crossgar. Consequently, notwithstanding the above caveats, the Authority’s own research and market share data, to the extent it is available, confirms that the proposed transaction is unlikely to give rise to competition concerns.

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<sup>33</sup> *op cit.* note 15, pages 13, 33 and 34. The estimates of the total foodservice market are based on research initiated in the last three years and hence the methodology may be subject to change in light of on-going experience and feedback from distributors and operators.

<sup>34</sup> *Op cit.* note 15, page 21.

<sup>35</sup> The parties estimate some, but not all, competitor market share estimates with reference to published annual accounts.

<sup>36</sup> For more information on the Authority’s approach to HHI calculations see [http://www.tca.ie/images/uploaded/documents/n\\_02\\_004%20Merger%20Analysis%20Guidelines.PDF](http://www.tca.ie/images/uploaded/documents/n_02_004%20Merger%20Analysis%20Guidelines.PDF).

<sup>37</sup> As noted in paragraphs 43 this contrasts with the availability of independent data in the retail sector.

### Trading Relationships

47. The Authority's own analysis and market enquiries confirm that the Irish foodservice sector is fragmented, particularly in comparison to countries such as the UK and USA.<sup>38</sup> Market enquiries confirm that most business between distributors and operators, in the State and on the island of Ireland, is conducted on a non-contractual *ad hoc* basis, especially for smaller independent operators and smaller distributors. Market enquiries confirm that by comparison, multi-year contracts and tenders are the predominant method of procurement for large public operators such as hospitals and prisons. These types of contracts are also common for large private operators (e.g., providing catering services for large firms). However, switching by either distributor or operators can and does occur, because multi-year contracts typically allow for (i) early termination by either party and (ii) price reviews.<sup>39</sup>
48. In summary, within the island of Ireland (i.e., in both the State and Northern Ireland) switching is viable and common between (i) operators and distributors and vice versa and (ii) distributors and suppliers and vice versa.
49. Market enquiries confirm that nominating suppliers (i.e., "Wheels only"), as described in paragraph 26, is a viable and not uncommon alternative to purchasing via distributors (i.e., "Distributed Wholesale"). This option, particularly when exercised by larger operators, maintains downward price pressure on distributors.

### Operator and Product Categories

50. Competitive effects in categories within the foodservice sector may or may not be similar to the overall effects described above. Consequently it is necessary for the Authority to consider whether the proposed transaction would give rise to adverse competitive effects in operator and product categories within the overall foodservice sector.
51. On the basis of market enquiries and turnover information seen by the Authority the product categories where Pallas and Crossgar are strongest, and hence where competitive concerns might appear most likely to arise, are: Meat, Poultry and Frozen products.<sup>40</sup> With reference to Table 2:
  - Pallas generates approximately [...] of its turnover from distributing Meat products, and approximately [...] % of its turnover from Canned and Dried products. Poultry, Dairy and Frozen products all generate slightly more than approximately [...] % of Pallas turnover.<sup>41</sup>
  - Crossgar generates approximately [...] % of its turnover from Poultry products and approximately [...] % of its turnover from

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<sup>38</sup> Correspondence with Bord Bia dated 2 August 2012 states *inter alia* that foodservice chains are more common in the UK and USA than in Ireland.

<sup>39</sup> Market enquiries indicate that review may be either on the basis of negotiation and/or a relevant price index, particularly with respect to fuel prices.

<sup>40</sup> In the absence of detailed market share data (e.g., by product category) the proportions of each parties' turnover together with the presence or otherwise of competitors provides one indicator of potential competition concerns.

<sup>41</sup> Pallas RFI response of 26 July 2012.

Meat Products. Frozen products generate approximately [...]% of Crossgar turnover.<sup>42</sup>

52. Information supplied by the parties and confirmed by market enquiries indicates that there are effective competitors, both full-range and specialist distributors, to a merged Pallas/Crossgar in each of the product categories in Table 2 including Meat, Poultry, and Frozen products.
53. The Authority's own analysis based in part on its own enquiries also indicates the presence of effective competitors for contracts to distribute foodservice products to larger public and private sector operators. For example Irish prison and HSE tender processes indicate in most instances the presence of [...] viable bidders.<sup>43</sup>
54. In summary, the market share evidence supplied by the parties, market enquiries and the Authority's own analysis indicate that the proposed transaction does not give rise to competition concerns in either the foodservice sector as a whole or in any foodservice operator or product categories listed in Tables 1 and 2 above.
55. While the proposed transaction does not give rise to competition concerns, market enquiries suggest that further consolidation in the foodservice sector could occur in the future. Depending on the circumstances, it is possible that further consolidation leading to further concentration in the foodservice sector, or categories therein, could give rise to competition concerns should substantial mergers be proposed in the future.

#### *Vertical Effects*

56. As indicated previously in paragraph 13 Crossgar self-supplies some foodservice products. As stated by the parties:

*"Crossgar owns and controls the sourcing of its poultry, meat and sauce products"*<sup>44</sup>

57. That is, while Crossgar distributes poultry, meat and sauce products to operators it does not supply meat, poultry and sauce products to other distributors.<sup>45</sup> The self-supply of meat and poultry products will remain the same with respect to a merged Pallas/Crossgar entity. The proposed transaction does not in itself provide an opportunity or an incentive for the combined entity to foreclose either its competitors or customers in Meat or Poultry products.

#### **Ancillary Restraints**

58. As part of the proposed transaction the vendors, i.e., the shareholders of Crossgar, have entered into non-compete and non-solicitation covenants with Pallas, to apply for a duration of [...] years. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

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<sup>42</sup> Crossgar RFI response of 26 July 2012.

<sup>43</sup> Note, however, there were only [...] bidders for [...] contract.

<sup>44</sup> Notification Form page 8. With reference to Figure 1 self supply means the supply of products to Crossgar as opposed to the distribution of products from Crossgar to operators

<sup>45</sup> *Op cit.* note 9. Sauce products are not part of the transaction. Crossgar does also purchase meat and poultry from other suppliers.

## **DETERMINATION**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Sysco Corporation, through its wholly owned subsidiary Pallas Foods Ltd., would acquire sole control of Crossgar Foodservice Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

### **For the Competition Authority**

Stephen Calkins  
Member of the Competition Authority  
Director, Mergers Division